SUPREME COURT OF THE UNITED STATES.

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the Circuits, agreeably to the Acts of Congress in such case made and provided, and that such allotment be entered of record, viz:

For the First Circuit, FELIX FRANKFURTER, Associate Justice.

For the Second Circuit, HARLAN F. STONE, Associate Justice.

For the Third Circuit, OWEN J. ROBERTS, Associate Justice.

For the Fourth Circuit, CHARLES EVANS HUGHES, Chief Justice.

For the Fifth Circuit, HUGO L. BLACK, Associate Justice.

For the Sixth Circuit, JAMES C. MCREYNOLDS, Associate Justice.

For the Seventh Circuit, FRANK MURPHY, Associate Justice.

For the Eighth Circuit, STANLEY REED, Associate Justice.

For the Ninth Circuit, WILLIAM O. DOUGLAS, Associate Justice.

For the Tenth Circuit, STANLEY REED, Associate Justice.

For the District of Columbia, CHARLES EVANS HUGHES, Chief Justice.

February 12, 1940.

(For next previous allotment, see 308 U. S. p. iv.)

SUPREME COURT OF THE UNITED STATES

THURSDAY, FEBRUARY 1, 1940.

Present: The CHIEF JUSTICE, MR. JUSTICE MCREYNOLDS, MR. JUSTICE STONE, MR. JUSTICE ROBERTS, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, and MR. JUSTICE DOUGLAS.

Mr. Attorney General Jackson addressed the Court as follows:

Mr. Chief Justice and Associate Justices of the Supreme Court of the United States: The Bar of the Supreme Court, including those who here represent the executive branch of the government, desires to observe with you the one hundred fiftieth anniversary of this Court's service. We do so in a spirit of rededication to the great principles of freedom and order which come to life in your judgments.

The Court as we know it could hardly have been foreseen from its beginnings. When it first convened, no one seemed in immediate need of its appellate process, and it adjourned—to await the perpetration of errors by lower courts. Errors were, of course, soon forthcoming. The Justices who sat upon the Bench, although not themselves aged, were older than the Court itself. The duration of an argument was then measured in days instead of hours. All questions were open ones, and neither the statesmanship of the Justices nor the imagination of the advocate was confined by the ruling case. Some philosophers have so feared the weight of tradition as to assert that happy are a people who have no history. We, however, may at least believe that there was some happiness in belonging to a bar that had little occasion to distinguish precedents or in sitting upon a Court that could not be invited to overrule

itself. Few tribunals have had greater opportunity for original and constructive work, and none ever seized opportunity with more daring and wisdom.

From the very beginning the duties of the Court required it, by interpretation of the Constitution, to settle doubts which the framers themselves had been unable to resolve. Luther Martin, in his great plea in *McCulloch* v. *Maryland,* was not only an advocate but a witness of what had been and a prophet of things to come. He said: "The whole of this subject of taxation is full of difficulties, which the Convention found it impossible to solve, in a manner entirely satisfactory." Thus, controversies so delicate that the framers would have risked their unity if an answer had been forced were bequeathed to this Court. During its early days it had the aid of counsel who expounded the Constitution from intimate and personal experience in its making. They knew that to get acceptance of its fundamental design for government many controversial details were left to be filled in from time to time by the wisdom of those who were to follow. This knowledge made them bold.

The passing of John Marshall marked the passing of that phase of the Court's experience. Thereafter the Constitution became less a living and contemporary thing—more and more a tradition. The work of the Court became less an exposition of its text and setting and purposes, and became more largely a study of what later men had said about it. The Constitution was less resorted to for deciding cases, and cases were more resorted to for deciding about the Constitution. This was the inevitable consequence of accumulating a body of judicial experience and opinion which the legal profession would regard as precedents.

It would, I am persuaded, be a mistake to regard the work of the Court of our own time as either less important or less constructive than that of its earlier days. It is perhaps more difficult to revise an old doctrine to fit changed conditions than to write a new doctrine on a clean slate. But,

as the underlying structure of society shifts, its law must be reviewed and rewritten in terms of current conditions if it is not to be a dead science.

In this sense, this age is one of founding fathers to those who follow. Of course, they will reëxamine the work of this day, and some will be rejected. Time will no doubt disclose that sometimes, when our generation thinks it is correcting a mistake of the past, it is really only substituting one of its own. But the greater number of your judgments become a part of the basic philosophy on which a future society will adjust its conflicts.

We who strive at your bar venture to think ourselves also in some measure consecrated to the task of administering justice. Recent opinions have reminded us that the initiative in reconsidering legal doctrine should come from an adequate challenge by counsel. Lawyers are close to the concrete consequences upon daily life of the pronouncements of this Court. It is for us to bring the cases and to present for your corrective action any wrongs and injustices that result from operation of the law.

However well the Court and its bar may discharge their tasks, the destiny of this Court is inseparably linked to the fate of our democratic system of representative government. Judicial functions, as we have evolved them, can be discharged only in that kind of society which is willing to submit its conflicts to adjudication and to subordinate power to reason. The future of the Court may depend more upon the competence of the executive and legislative branches of government to solve their problems adequately and in time than upon the merit which is its own. There seems no likelihood that the tensions and conflicts of our society are to decrease. Time increases the disparity between underlying economic and social conditions, in response to which our Federation was fashioned, and those in which it must function. Adjustment grows more urgent, more extensive, and more delicate. I see no reason to doubt

that the problems of the next half century will test the wisdom and courage of this Court as severely as any half century of its existence.

In a system which makes legal questions of many matters that other nations treat as policy questions, the bench and the bar share an inescapable responsibility for fostering social and cultural attitudes which sustain a free and just government. Our jurisprudence is distinctive in that every great movement in American history has produced a leading case in this Court. Ultimately, in some form of litigation, each underlying opposition and unrest in our society finds its way to this judgment seat. Here, conflicts were reconciled or, sometimes, unhappily, intensified. In this forum will be heard the unending contentions between liberty and authority, between progress and stability, between property rights and personal rights, and between those forces defined by James Bryce as centrifugal and centripetal, and whose struggle he declared made up most of history. The judgments and opinions of this Court deeply penetrate the intellectual life of the nation. This Court is more than an arbiter of cases and controversies. It is the custodian of a culture and is the protector of a philosophy of equal rights, of civil liberty, of tolerance, and of trusteeship of political and economic power, general acceptance of which gives us a basic national unity. Without it our representative system would be impossible.

Lord Balfour made an observation about British government, equally applicable to American, and expressed a hope that we may well share, when he wrote:

"Our alternating Cabinets, though belonging to different parties, have never differed about the foundation of society, and it is evident that our whole political machinery presupposes a people so fundamentally at one that they can afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict. May it always be so."

Mr. Charles A. Beardsley, President of the American Bar Association, addressed the Court as follows:

Mr. Chief Justice and the Associate Justices of the Supreme Court of the United States: I appreciate this opportunity, which has been accorded to me, as the representative of the American Bar Association, to participate in this commemoration of the 150th anniversary of the first session of this honorable Court.

It is most fitting that this event should be commemorated. Its commemoration may well serve to recall to the minds of the American people the purposes of the founders of our National Government, and the part, in the fulfillment of those purposes, that this Court was intended to take, has taken, and will take in the years to come. And this commemoration may well serve, further, to challenge the American people to dedicate themselves anew to the fulfillment of those purposes.

In the Preamble of our Constitution, its framers recited the purposes to attain which the Constitution was to be ordained and established. In this recital, the purpose to "establish justice" is second only to the purpose "to form a more perfect union."

Daniel Webster reminds us that justice is "the ligament that holds civilized beings together," and "the greatest interest of man on earth."

To the end that they might "establish justice," to the end that they might provide "the ligament that holds civilized beings together," to the end that they might strengthen the foundation of civilization on the North American Continent, and to the end that they might serve "the greatest interest of man on earth," the framers of the Constitution provided therein for a federal judiciary, with this Court as its head, to administer "justice" under and pursuant to law.

In the words of President Washington, this Court was intended to be "the keystone of our political fabric." And it was intended to be the protector of our Constitution, and of the inalienable rights of a free people.

Gladstone's characterization of our Constitution as "the most wonderful product ever struck off at a given time by the brain and purpose of man," is justified by the fact that, for 150 years, this Court has approached as near as any human institution might well be expected to approach, the fulfillment of the purpose of the framers of the Constitution, to "establish justice" for the American people.

We may properly take pride in the extent to which this Court has approached that fulfillment, realizing as we do, as Addison reminds us, that to be just "to the utmost of our abilities, is the glory of man," and that "to be perfectly just, is an attribute of the divine nature."

Not only is it permissible on this occasion for us to recall that this Court is a human institution, but it is also desirable for the American people to recall, on this occasion, that this human institution will endure, and that justice, under and pursuant to law, will be preserved for the American people, only so long as the American people, by their alertness, fidelity, and sanity cause them to be preserved and to endure.

For there are forces at work in the world today that are inimical to the continued fulfillment by this Court of the purpose for which it was created.

As a result of the workings of these forces, in substantial parts of the world, national temples of justice are no longer honored or worthy of honor, and international morality and law are giving ground to international immorality and anarchy. And many hundreds of millions of people are engaged in war, seeking to settle their differences, not according to justice, but by force—by the use of a means that is calculated to bring victory to the strongest, or to the most unscrupulous, of the contending peoples, wholly regardless of justice.

And, even within our own borders, there are forces at work that are inimical to the principles upon which our Government is founded, including the principle of justice under and pursuant to law.

Thus, there is a tendency, among groups of employers and employees, to use physical force as the means of settling differences, instead of being willing to use the administration of justice—the institution devised by man, when he was emerging from barbarism, as a substitute for combats, for fights and for wars—an institution that is calculated to bring victory to the contending party who has the most justice on his side, regardless of the relative physical strength of the contending parties.

Also, we have among us many people who are eternally striving to inculcate doctrines that, in other parts of the world, are producing international lawlessness, anarchy, and war, doctrines that, in other parts of the world, are destroying temples of justice, and doctrines that, in other parts of the world, are depriving the people of their liberties, and of their lives.

And, finally, there is an all-too-widespread inclination to disregard the fundamental principles upon which our Government, and our Civilization, are founded, and an all-too-general disposition to ignore the historic warning that "eternal vigilance is the price of liberty."

For 150 years the American people have honored, respected, and sustained this Court, and, through the years this Court has gained for itself the gratitude and affectionate regard of the American people, because the American people have been steadfast in their devotion to the fundamental principles upon which our Government is founded, and because the American people have seen in the record of this Court the evidence of the striving by its members to be just, "to the utmost of" their "abilities."

This Court has gained, and has retained, this honor, this respect, this gratitude, and this affectionate regard, although, in the words of a nineteenth-century publicist, this Court has no "palaces or treasures, no arms but truth and wisdom, and no splendor but the justice and publicity of its judgments."

On this occasion, as we commemorate the 150th anniversary of the first session of this Court, we dedicate our-

selves anew, to the task of defending our Constitution, to the task of guarding our liberties, and to the task of strengthening, defending, and preserving this Court, as "the keystone of our political fabric," as the protector of our Constitution, and as the guarantor of justice for the American people under and pursuant to law, not only for another 150 years, but also for all time.

The Chief Justice said:

Mr. Attorney General and Mr. Beardsley: The Court welcomes the words of appreciation you have spoken in recognition of the one hundred and fiftieth anniversary of the day appointed for the first session of this tribunal. We are highly gratified at the presence of distinguished Senators and Representatives,—the members of the Judiciary Committees of the Houses of Congress and of the Special Joint Committee appointed in relation to this occasion. We trust that what has been said echoes a sentiment cherished in the hearts of the American people. They have again and again evinced the sound instinct which leads them, regardless of any special knowledge of legal matters, to cherish as their priceless possession the judicial institutions which safeguard the reign of law as opposed to despotic will. Democracy is a most hopeful way of life, but its promise of liberty and of human betterment will be but idle words save as the ideals of justice, not only between man and man, but between government and citizen, are held supreme.

The States have the power and privilege of administering justice except in the field delegated to the Nation, and in that field there is a distinct and compelling need. The recognition of this anniversary implies the persistence, through the vicissitudes of one hundred and fifty years, of the deep and abiding conviction that amid the clashes of political policies, the martial demands of crusaders, the appeals of sincere but conflicting voices, the outbursts of passion and of the prejudices growing out of particular in-

terests, there must be somewhere the quiet, deliberate and effective determination of an arbiter of the fundamental questions which inevitably grow out of our constitutional system and must be determined in controversies as to individual rights. It is the unique function of this Court, not to dictate policy, not to promote or oppose crusades, but to maintain the balance between States and Nation through the maintenance of the rights and duties of individuals.

But necessary as is this institution, its successful working has depended upon its integrity and the confidence thus inspired. By the method of selection, the tenure of office, the removal from the bias of political ambition, the people have sought to obtain as impartial a body as is humanly possible and to safeguard their basic interests from impairment by the partiality and the passions of politics. The ideals of the institution cannot, of course, obscure its human limitations. It does most of its work without special public attention to particular decisions. But ever and anon arise questions which excite an intense public interest, are divisive in character, dividing the opinion of lawyers as well as laymen. However serious the division of opinion, these cases must be decided. It should occasion no surprise that there should be acute differences of opinion on difficult questions of constitutional law when in every other field of human achievement, in art, theology, and even on the highest levels of scientific research, there are expert disputants. The more weighty the question, the more serious the debate, the more likely is the opportunity for honest and expert disagreement. This is a token of vitality. It is fortunate and not regrettable that the avenues of criticism are open to all whether they denounce or praise. This is a vital part of the democratic process. The essential thing is that the independence, the fearlessness, the impartial thought and conscientious motive of those who decide should both exist and be recognized. And at the end of 150 years, this tribunal still stands as an embodiment of the ideal of the independence of the judicial function in this, the highest and most important sphere of its exercise.

We cannot recognize fittingly this anniversary without recalling the services of the men who have preceded us and whose work has made possible such repute as this institution enjoys. This tribunal works in a highly concrete fashion. The traditions it holds have been wrought out through the years at the conference table and in the earnest study and discussions of men constantly alive to a supreme obligation. We do not write on a blank sheet. The Court has its jurisprudence, the helpful repository of the deliberate and expressed convictions of generations of sincere minds addressing themselves to exposition and decision, not with the freedom of casual critics or even of studious commentators, but under the pressure and within the limits of a definite official responsibility.

To one who over twenty-nine years ago first took his seat upon this Bench, this day is full of memories of associations with those no longer with us, who wrought with strength and high purpose according to the light that was given them, in complete absorption in their judicial duty. We pay our tribute to these men of the more recent period as we recognize our indebtedness to their eminent predecessors. We venerate their example. Reflection upon their lives brings emphasis to the thought that even with the tenure of the judicial office, the service of individuals however important in their day soon yields to the service of others who must meet new problems and carry on in their own strength.

The generations come and go but the institutions of our Government have survived. This institution survives as essential to the perpetuation of our constitutional form of government,—a system responsive to the needs of a people who seek to maintain the advantages of local government over local concerns and at the same time the necessary national authority over national concerns, and to make sure that the fundamental guarantees with respect to life, liberty and property, and of freedom of speech, press, assembly and religion shall be held inviolate. The fathers deemed that system of government well devised to secure the blessings of liberty to themselves and their posterity.

Whether that system shall continue does not rest with this Court but with the people who have created that system. As Chief Justice Marshall said: "The people made the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will." It is our responsibility to see that their will as expressed in their Constitution shall be faithfully executed in the determination of their controversies.

And deeply conscious of that responsibility, in the spirit and with the loyalty of those who have preceded us, we now rededicate ourselves to our task.